

**MINUTES OF REGULAR BOARD MEETING
CENTRAL OKLAHOMA MASTER CONSERVANCY DISTRICT
Thursday, June 4, 2015
6:30 P.M.**

PRESIDING: Roger Frech, Vice-Chairman

MEMBERS PRESENT: William Janacek, Mark Edwards, Kevin Anders and Amanda Nairn, Jann Knotts

MEMEBERS ABSENT: Jim Bennett, Chairman

OTHERS PRESENT: Randy Worden, General Manager; Neal Engleman, O&M Specialist; Dena Park, Administrative Assistant; Mike Wofford, District Counsel; Chris Mattingly & Scott Aynes, City of Norman; Shane Smith, Kyle Kruger and Michael Graves, Garver; Guy Henson, City of Midwest City, City Manager; Steve Lewis, City of Norman, City Manager; Paul Koenig, OWRB

Call to Order. The meeting was called to order at 6:30 P.M. by Roger Frech, chairman. The General Manager stated he had posted notice of the monthly board meeting in compliance with the open meetings act.

1. Discussion/Consideration of Minutes from previous meetings. Bill Janacek made the motion, and Kevin Anders seconded the motion, to approve the minutes as presented of the regular board meeting held on Thursday May 7, 2015. Roll call vote:

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|---------------------------|--------|
| Chairman Jim Bennett | Absent |
| Vice Chairman Roger Frech | Yes |
| Member Jann Knotts | Yes |
| Secretary Kevin Anders | Yes |
| Member Mark Edwards | Yes |
| Member William Janacek | Yes |
| Member Amanda Nairn | Yes |

Motion passed.

2. Discussion/Consideration of Operating Account Financial Statements and Claims. The operating account financial statements for May & June, 2015 was presented to board members. Kevin Anders made the motion to approve the financial statements and ordered payment of claims, Mark Edwards seconded the motion. Roll call vote:

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|---------------------------|--------|
| Chairman Jim Bennett | Absent |
| Vice Chairman Roger Frech | Yes |
| Member Jann Knotts | Yes |
| Secretary Kevin Anders | Yes |
| Member Mark Edwards | Yes |
| Member William Janacek | Yes |
| Member Amanda Nairn | Yes |

Motion passed.

3. Presentation of Water Quality Monitoring results from OWRB for 2014-15. Paul Koenig gave the board a presentation on the Water Quality Monitoring results including updated information on the SDOX performance. Discussion held.

4. Consideration and approval of the OWRB Water Quality Monitoring Contract. The wrong contract was sent by OWRB to the District. Motion to table for next meeting was made by Bill Janacek and the second was made by Mark Edwards. Roll call vote:

| | |
|---------------------------|--------|
| Chairman Jim Bennett | Absent |
| Vice Chairman Roger Frech | Yes |
| Member Jann Knotts | Yes |
| Secretary Kevin Anders | Yes |
| Member Mark Edwards | Yes |
| Member William Janacek | Yes |
| Member Amanda Nairn | Yes |

Motion passed.

5. Consideration and approval of changes to the Defined Contribution Master Plan and Joinder Agreement. Motion to approve made by Jann Knotts and seconded by Mark Edwards. Roll call vote:

| | |
|---------------------------|--------|
| Chairman Jim Bennett | Absent |
| Vice Chairman Roger Frech | Yes |
| Member Jann Knotts | Yes |
| Secretary Kevin Anders | Yes |
| Member Mark Edwards | Yes |
| Member William Janacek | Yes |
| Member Amanda Nairn | Yes |

Motion passed.

6. Consideration, discussion and possible vote to make application to revise the schedule of use of water rights and submit it to OWRB for acceptance. Discussion held. No action taken.

7. Discussion, consideration and possible action to require delivery of pertinent documents of items of discussion to be included in mailings of the agenda to members of the board and to cease the practice of providing documents of consideration and concern of the board at the time of the meeting. Discussion held. The Board will receive documents pertaining to the agenda, with the agenda, prior to the meetings. The Financial statements will be reviewed a month in arrears at the board meetings; since they are usually not available until sometimes the day of the meeting. This will allow the Board Members more time to review everything prior to the meeting.

8. Consideration, discussion and possible vote to accept the engineering report from Garver on water reuse and authorize Garver to present it to DEQ for review. Discussion was held. Motion to table to allow time to get the information on further costs for phase 3; since they are only going to submit phase 1 or 2 until that is completed was made by Mark Edwards and seconded by Bill Janacek. Roll call vote:

| | |
|---------------------------|--------|
| Chairman Jim Bennett | Absent |
| Vice Chairman Roger Frech | Yes |
| Member Jann Knotts | Yes |
| Secretary Kevin Anders | Yes |
| Member Mark Edwards | Yes |
| Member William Janacek | Yes |

Member Amanda Nairn Yes

Motion passed.

9. Discussion, Consideration and possible action to accept or reject the resolutions of Midwest City and Del City indicating opposition to the augmentation of indirect potable water from the City of Norman Wastewater Plant into Lake Thunderbird. Discussion held. Motion to acknowledge receipt of the Resolutions for Midwest City and Del City in reference to the water reuse was made by Kevin Anders and seconded by Amanda Nairn. Break held from 8:33 pm until 8:43 pm. Roll call vote:

| | |
|---------------------------|--------|
| Chairman Jim Bennett | Absent |
| Vice Chairman Roger Frech | Yes |
| Member Jann Knotts | Yes |
| Secretary Kevin Anders | Yes |
| Member Mark Edwards | No |
| Member William Janacek | No |
| Member Amanda Nairn | Yes |

Motion passed.

10. Discussion, consideration and possible action to revise and or amend the adopted budget of COMCD for Fiscal year 2015-16. Discussion held. Motion to remove the \$180,000 from the budget by Mark Edwards and the second was by Bill Janacek. Roll call vote:

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|---------------------------|--------|
| Chairman Jim Bennett | Absent |
| Vice Chairman Roger Frech | No |
| Member Jann Knotts | No |
| Secretary Kevin Anders | Yes |
| Member Mark Edwards | Yes |
| Member William Janacek | Yes |
| Member Amanda Nairn | No |

Motion not passed.

11. Presentation and discussion of reasons for the District to Pursue Title Transfer. Motion to table was made by Roger Frech and seconded by Kevin Anders. Roll call vote:

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|---------------------------|--------|
| Chairman Jim Bennett | Absent |
| Vice Chairman Roger Frech | Yes |
| Member Jann Knotts | Yes |
| Secretary Kevin Anders | Yes |
| Member Mark Edwards | Yes |
| Member William Janacek | Yes |
| Member Amanda Nairn | Yes |

Motion passed.

12. Consideration, discussion and possible vote to enter executive session to discuss the Title Transfer. Motion to table was made by Roger Frech and seconded by Kevin Anders. Roll call vote:

| | |
|---------------------------|--------|
| Chairman Jim Bennett | Absent |
| Vice Chairman Roger Frech | Yes |
| Member Jann Knotts | Yes |
| Secretary Kevin Anders | Yes |
| Member Mark Edwards | Yes |
| Member William Janacek | Yes |
| Member Amanda Nairn | Yes |

Motion passed.

13. Consideration, discussion and possible vote to enter executive session for discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee. Motion to table was made by Roger Frech and seconded by Mark Edwards. Roll call vote:

| | |
|---------------------------|--------|
| Chairman Jim Bennett | Absent |
| Vice Chairman Roger Frech | Yes |
| Member Jann Knotts | Yes |
| Secretary Kevin Anders | Yes |
| Member Mark Edwards | Yes |
| Member William Janacek | Yes |
| Member Amanda Nairn | Yes |

Motion passed.

14. General Manager's Report Mr. Worden's written report was distributed to the Board concerning his travel, meetings and seminars attended, lake statistical data, maintenance, inspections, equipment repairs, acquisitions and activities. Items mentioned and discussed are listed below:

- Staff attended safety meeting on personal protective equipment.
- Participated in NWRA Federal Affairs Committee conference call.
- Attended Friends of Lake Thunderbird meeting.
- Attended Water Reuse Engineering Report to City of Norman staff.
- Attended Water Reuse Engineering Report to City of Midwest City Council.
- Attended Water Reuse Engineering Report to City of Del City Council.
- Met with industrial paint vendor regarding painting exterior of terminal tank at City of Norman WTP.
- Attended Water Law Conference.
- Placed order for new pickup truck for the manager.
- Crew began mowing season again at the dam and fire lanes.
- Solicited pricing for new VFD at plant and considered options for replacement.
- Began shoreline erosion control study in-house.
- All staff participated in First Aid/ CPR training by American Red Cross
- Began mussel sampling in lake
- Attended Water Reuse seminar at the National Weather Center

- Managed flood event and follow-up after May 23 rainfall event sent water over the emergency spillway for the first time in the history of Lake Thunderbird
- Ordered new VFD for one of the relift pumps at the main pumping plant. Changed to Toshiba drive rather than replacing with Schneider drive.
- SDOX system was flooded
- One of the District's utility vehicles was stolen at the dam.
- Randy advised the Board of Neal Engleman's resignation. He thanked Neal for his service, commended him on his years of service and advised Neal that he would be sorely missed and had done an exceptional job.

15. Legal Counsel Report.

- Research and writing for addressing Little River water use permit, Oklahoma Water Resources Board schedule of use; research regarding Federal contract provisions and legal requirements to protect District water rights; research and discussions with Manager regarding life of Norman Project as legal factor in schedule of use extension; draft petition for requesting extended schedule of use
- Advise Board members on issue raised regarding Open Meeting Act, Board member attendance at Del City Council/Municipal Services Authority meeting of May 4
- Continued draft of comments regarding application to the US EPA of Citizen Potawatomi Nation for "treatment in a manner similar to a state" under the Clean Water Act, and inclusion of Lake Thunderbird in the Nation's claim of jurisdictional reach. The development of these comments has been re-prioritized as a result of the following developments:

We had discussions with the office of the Oklahoma Secretary of Energy and Environment when the issue of Citizen Potawatomi Nation claims to tribal jurisdiction over "the eastern arm" of Lake Thunderbird came to our attention late last year. The Nation's statement asserting its claim to authority to regulate Lake Thunderbird appeared in portions of the Nation's application to the US EPA for "treatment in a manner similar to a state" that the Nation filed with US EPA in September of last year. The application seeks authority for the Nation to operate, in lieu of the State of Oklahoma, three programs under the federal Clean Water Act: Adoption of water quality standards; Section 401 certification of discharge permit terms to be or not be in compliance with the tribal water quality standards, which would include a large degree of regulatory control over the terms of discharge permits issued by the State ODEQ; and operation of the non-point source discharge program.

One of the issues raised by the application of the Nation to US EPA is that, as we read it, it asserts "inherent authority" to regulate water quality and water usage throughout Pottawatomie County and for all surface waters and groundwater west of Pottawatomie County to the Indian Meridian. Therefore, the area to the east of the Indian Meridian in Cleveland County is included therein. The Nation asserts that it has jurisdiction over the waters in the drainage basin leading to and within the eastern arm of Lake Thunderbird.

A Cooperative Agreement, signed in 2009 by Governor Brad Henry, is a legal requirement for an Indian nation in Oklahoma to seek "treatment in a manner similar to a state" under federal statutory law (the "Inhofe Amendment" or what the tribes sometimes refer to as the "Midnight Rider"). The Cooperative Agreement is currently in effect but expires unless renewed in 2017.

One of the problems with the Cooperative Agreement is that it purports to approve of the Nation receiving “treatment in a manner similar to a state” for administration of federal environmental programs without specifying the geographical limits of the Nation’s regulatory authority if the application is approved, thus failing to resolve the issue of the Nation’s claim over the waters of Lake Thunderbird.

The Secretary’s office has been reviewing the matter since it learned of the Nation’s application to the EPA. We stayed in touch with the Secretary’s office throughout the process of its review of the application and the 2009 Cooperative Agreement. As we understand the matter, the Secretary’s office also vetted the issue among Oklahoma State agencies and possibly other stakeholder groups.

We are now told by the Secretary’s office that a week or so ago the Governor sent a letter to US EPA Region 6 stating that the State does not intend to renew the Cooperative Agreement between the State of Oklahoma and the Citizen Potawatomi Nation in which the State of Oklahoma agreed to approve of Citizen Potawatomi Nation “treatment in a manner similar to a state”. We are told that, with the State’s decision to decline to renew the Cooperative Agreement, the US EPA has let the Secretary’s office know that the EPA will not pursue reviewing the application of the Citizen Potawatomi Nation for “treatment in a manner similar to a state” under the federal Clean Water Act.

As a result of this action, COMCD counsel has no further recommendations to make regarding the issue at this time. We will be prepared to submit recommendations and draft comments for the Board to review if needed in the future.

- In addition to the above information, the State has taken some other action impacting the interests of the Citizen Potawatomi Nation.
 - This session the Legislature passed Senate Bill 563. It would give tribally owned or operated utilities the “right to use the public roads and highways of this state, including the right-of-way and all easements pertaining thereto” as the law does for other public utilities. Among many other things, this would give the Citizen Potawatomi Nation, presumably, the ability to lay a water line from the eastern arm of Lake Thunderbird to the Nation’s so-called “Rural Water District 3” treatment and distribution system using the public rights-of-way. At least it could give that right to the Nation if the Bureau of Reclamation did not object.

However, the Governor vetoed this bill on April 17. In her veto message the Governor cited the following: (1) Tribal businesses should not have an advantage over non-tribal businesses; and (2) tribes cannot be sued by parties in Oklahoma state courts because of tribal sovereign immunity; and (3) therefore, without a waiver of sovereign immunity connected with the grant of such rights-of-way on a tribe-by-tribe basis, the citizens of Oklahoma would be subject to potentially costly wrongs without a means of redress.

- Advise Manager regarding easement encroachment issue, ability of District to claim and retain costs for management of same from the encroaching party
- Advise Manager regarding new provisions of Oklahoma ethics regulations regarding agency liaisons to legislature; issue opinion that these regulations are inapplicable to the District as the District is not a political subdivision of the State

- Joint motion to extend date of oral argument on District motion for summary judgment in *COMCD v. Kleman* (eastern arm of Lake, roadway easement case) due to Mr. Kleman's daughter's illness and status in hospice

16. New Business -

The meeting adjourned at 9:15 PM.